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Attorneys for Plaintiff Kate Spade LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
KATE SPADE LLC,	:	
	:	
Plaintiff,	:	
	:	12 Civ. 9260 (MGC)
-against-	:	
	:	
SATURDAYS SURF LLC,	:	
	:	
Defendant.	:	
-----	X	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Kate Spade LLC (“Kate Spade”), by its attorneys, Debevoise & Plimpton LLP, for its complaint against Saturdays Surf LLC (“SSLLC”), alleges upon personal knowledge with respect to itself and its own acts, and upon information and belief as to all other matters, as follows:

Preliminary Statement

1. KATE SPADE is among the world’s most famous fashion brands. For twenty years, women have enjoyed the fresh, modern designs of KATE SPADE NEW YORK clothing and accessories, which are renown for their bold, playful, color-filled palettes. On the occasion of the brand’s 20th anniversary, Kate Spade is poised to launch

a new global women's lifestyle brand – KATE SPADE SATURDAY – that will share the core values of its older sister but will express them in a more casual way. That launch, though, is threatened by the spurious accusations of trademark infringement made by SSLLC through correspondence, blog posts, social media comments, and the recent defacing of Kate Spade's own Instagram page and Twitter feed. Because those accusations are wholly without any merit whatsoever, Kate Spade seeks a declaration from the Court that its new KATE SPADE SATURDAY line does not infringe or otherwise violate SSLLC's trademark rights in its mark SATURDAYS SURF NYC.

2. Kate Spade conceived of the name of KATE SPADE SATURDAY more than three years ago, during the summer of 2009. Kate Spade selected this name for its new brand to combine the playfulness and laid back feel of Saturday – the first day of the weekend – with the enormous equity in the KATE SPADE name, which has long been recognized as one of the top 100 fashion brands in the world. *Significantly, at the time Kate Spade conceived of the KATE SPADE SATURDAY brand, it had never heard of SSLLC or its stores or trademark.*

3. In 2010, Kate Spade decided to proceed with its plans for the new KATE SPADE SATURDAY brand. It engaged counsel to clear the trademark and commissioned comprehensive trademark search reports to determine whether there were any other marks that might be confused with the KATE SPADE SATURDAY trademark. Those search reports looked at trademark registrations around the world, federal trademark applications and registrations in the United States, state trademark registrations

in all fifty states, Internet domain names, business names used in the United States, and common law uses of marks in the United States containing the word Saturday including in the fields of apparel, footwear, retail store services, cosmetics, prescription glasses, sunglasses, watches, stationery, furniture, dinnerware, bedding and tablecloths.

Significantly, neither SSLLC nor its SATURDAYS SURF NYC trademark or corporate name was mentioned in these search reports.

4. After receiving the opinion of its counsel, Kate Spade applied to register the first of several KATE SPADE SATURDAY trademarks with the United States Patent & Trademark Office (“USPTO”) on an intent-to-use basis. The USPTO conducted a thorough review of the application, concluded that there were no other registered trademarks that were likely to be infringed by the KATE SPADE SATURDAY trademark, and approved the application for publication in the USPTO’s *Official Gazette*. No one objected to the KATE SPADE SATURDAY trademark application. Accordingly, in December 2010, the USPTO allowed the application. **Significantly, SSLLC never opposed Kate Spade’s application to register KATE SPADE SATURDAY.**

5. Having developed the KATE SPADE SATURDAY name in 2009 independently, with no knowledge whatsoever of the SATURDAYS SURF NYC name, and having obtained an allowance from the USPTO in 2010, Kate Spade continued its work on the development of the brand, which is scheduled to launch in March 2013 with a first store in Tokyo, Japan, followed by the launch of the KATE SPADE SATURDAY e-commerce website. Among the steps Kate Spade has taken are the following:

- Kate Spade created a unique logo, with a hand-drawn font (shown below, in contrast to SATURDAYS SURF NYC's nautical-inspired logo).
- Kate Spade decided to use bold colors for the KATE SPADE SATURDAY brand, including yellow, which is used often in its logo.
- Kate Spade designed an array of optimistic, colorful products to appeal to young women in the mid-20s to mid-30s age group, including apparel, handbags, accessories and items for the home, featuring bright colors, strong prints and natural materials like cotton, canvas, and vachetta.
- Kate Spade developed a new website for this new brand.
- And Kate Spade crafted the new retail stores that will be dedicated to the sale of KATE SPADE SATURDAY goods.



6. In all, since the development of this brand in 2009, Kate Spade has invested millions of dollars in this new, global brand.

7. In the meantime, in April 2011, SSLLC – which sells surfboards, wetsuits, and men's clothing and apparel – applied to register its SATURDAYS SURF NYC trademark (including the logo shown above) with the USPTO. In September 2012, the USPTO approved SSLLC's applications. That means that the USPTO determined that the SATURDAYS SURF NYC trademark could co-exist with the already-approved KATE SPADE SATURDAY trademark without causing confusion. That conclusion is hardly surprising given the long list of other "Saturday"-related marks registered or used

for a variety of apparel and retail services, including SATURDAY T-SHIRTS, SATURDAYS BRITCHES, SATURDAY KHAKI, SATURDAY TRAIL, EVERYDAY'S SATURDAY, SINGLE ON SATURDAY, THE SECRET SATURDAYS, and GOOD SATURDAY.

8. Notwithstanding Kate Spade's good faith selection and clearance of the KATE SPADE SATURDAY trademark and the USPTO's approval of Kate Spade's trademark applications, SLLC has embarked on a campaign to disparage Kate Spade and to accuse Kate Spade of unlawful conduct. That campaign began with a letter from SLLC's counsel in which it accused Kate Spade of willful trademark infringement. It continued with blog reports – which, on information and belief, were planted by SLLC – in which bloggers accused Kate Spade of “swagger jack[ing]” the SATURDAYS SURF NYC trademark because, they claimed, “KATE SPADE WILL DO WHATEVER THE FUCK IT WANTS.” And, it has continued with defacing of the KATE SPADE SATURDAY Instagram and Twitter pages with postings that, on information and belief, were planted by SLLC and its supporters in which they accuse Kate Spade of “ripp[ing] off” SATURDAYS SURF NYC, and being a “Fraud” and “Fakes” and “lazycorporatetools”.

9. Nothing could be further from the truth. Kate Spade is a creative, responsible company that has independently developed a unique, distinctive brand. It developed that brand in the utmost of good faith, with no knowledge whatsoever of SATURDAYS SURF NYC. It properly applied to register its trademark in 2010. And,

notwithstanding SSLLC's accusations, there is no possibility of confusion here given the fame of the KATE SPADE house mark, the differences between the trademarks and logos, the co-existence of so many other "Saturday"-related marks including for apparel, the differences in the parties goods (KATE SPADE SATURDAY is a global lifestyle brand that will sell women's apparel, accessories and related items; SATURDAYS SURF NYC has two surfboard and men's clothing shops in downtown New York City and one in Tokyo), the differences in the parties' target customers, and the sophistication of the fashion-savvy young women to whom Kate Spade will promote its KATE SPADE SATURDAYS brand.

10. In response to SSLLC's counsel's letter, Kate Spade responded with a detailed letter in which it discussed its good faith selection of the name, described the KATE SPADE SATURDAY concept, and explained why consumers would not be confused between these two brands. Although SSLLC's counsel has not yet responded on the merits, SSLLC's subsequent childish antics on Kate Spade's Instagram and Twitter pages, and its apparent efforts to plant disparaging accusations through blogs, suggests a pattern of conduct designed to interfere with the launch of the KATE SPADE SATURDAY brand. Accordingly, Kate Spade has no choice but to turn to the courts for a declaration that conclusively establishes that it has the right to manufacture, distribute, market and sell its products under the KATE SPADE SATURDAY trademark and that its use of the KATE SPADE SATURDAY mark is unlikely to cause confusion with, or otherwise violate, SSLLC's rights in its SATURDAYS SURF NYC trademark.

The Parties

11. Plaintiff Kate Spade is a corporation organized and existing under the laws of the State of Delaware and headquartered at 2 Park Avenue, New York, New York 10016.

12. Upon information and belief, defendant SSLLC is a corporation organized and existing under the laws of the State of New York with its principal places of business at 31 Crosby Street, New York, New York 10013 and 17 Perry Street, New York, New York 10014. SSLLC sells surfboards, surfing gear and related apparel aimed at men through its website, at its two stores in New York City and at its one store in Tokyo, Japan. Image of defendant's stores, taken from its website, are shown below:



Jurisdiction and Venue

13. This Court has original jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Personal jurisdiction over Defendant is proper by virtue of its residing in, and transacting and doing business in, the District.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendant resides and regularly conducts business in this District under 28 U.S.C. § 1391(c).

KATE SPADE SATURDAY

15. As noted above, Kate Spade conceived of the KATE SPADE SATURDAY name in 2009. It selected this name for its new global brand to combine the playfulness and laid back feel of Saturday with the enormous equity in the KATE SPADE name. The KATE SPADE SATURDAY brand is aimed at a younger audience than its sister brand, KATE SPADE NEW YORK, and is intended to capture the casual, bold, colorful and playful spirit of Saturday, the start of the weekend. As has been reported in the press, this brand will target women in their mid-20s to mid-30s, at price points about half of those for KATE SPADE NEW YORK products.

16. Before adopting the KATE SPADE SATURDAY mark, Kate Spade ran a full trademark search on trademarks containing the word “Saturday,” which included searches of international, federal and state registrations, federal applications, domain names, websites, business names and other common law uses of “Saturday.” The search reports were hundreds of pages long, and revealed the existence of more than a hundred other trademarks using the word SATURDAY (or variations like SATURDAYS, SATURDAY’S, SATURDATE and SATURDAZE), including many in the apparel field.

17. Because SLLC had not applied to register its trademark at that time, there was no reference to SLLC or its SATURDAYS SURF NYC trademark in the

international, federal or state registration sections of the search report. Nor was there any reference whatsoever to SLLC or its SATURDAYS SURF NYC trademark in the common law, business names, website, and domain names sections of the search report. Accordingly, whatever use SLLC was making use of the SATURDAYS SURF NYC mark in 2010 was so minimal that it did not register in any of the databases reviewed by the trademark search firm.

18. On July 20, 2010, Kate Spade filed applications to register the KATE SPADE SATURDAY mark for a variety of jewelry, apparel and luggage items. In August 2011, Kate Spade filed additional applications to register KATE SPADE SATURDAY for, *inter alia*, sunglasses, stationery, household goods, and mail order services, and, in February 2012, it applied to register KATE SPADE SATURDAY for cosmetics. All of those applications were examined by the USPTO and all of them were found to be entitled to registration.

19. The jewelry application was published for opposition in the *Official Gazette* on October 26, 2010. The publication of the application in the *Official Gazette* constituted public notice to all parties of the proposed trademark and provided interested parties with a period of 30 days within which to file any objections. No one – including SLLC – objected, and the application was thereafter allowed by the USPTO on December 21, 2010.

20. Kate Spade's other applications were all similarly approved and published in the *Official Gazette*. Significantly, a number of those applications were published after SLLC's April 2011 application to register its trademark, SATURDAYS SURF NYC; one of the KATE SPADE SATURDAY applications was published as recently as October 9, 2012. Significantly, SLLC did not file *any* oppositions in the USPTO against any of Kate Spade's applications for KATE SPADE SATURDAY.

21. The fact that the USPTO approved both the KATE SPADE SATURDAY and the SATURDAYS SURF NYC trademarks, and believes that both trademarks are entitled to registration, is unsurprising given the prevalence of other "Saturday"-related trademark applications and registrations for apparel and related goods. Among the other SATURDAY-related trademarks that were listed in the 2010 search report are:

- SATURDAY T-SHIRTS for women's T-shirts sold by L.L. Bean;
- SATURDAYS BRITCHES for men's slacks;
- EVERYDAY'S SATURDAY for hats and shirts;
- FNSATURDAY for a wide variety of clothing;
- SINGLE ON SATURDAY for a wide variety of clothing;
- THE SECRET SATURDAYS for wide variety of clothing;
- SNAKE SATURDAY for hats, shirts, and sweatshirts;
- SATURDAY NIGHT FEVER for a wide variety of clothing;
- SATURDAY MORNING TV for a wide variety of clothing;
- RETIRED ... EVERY DAY'S A SATURDAY for shirts and hats; and
- GOOD SATURDAY for a wide variety of clothing.

SSLLC's Attempt to Block the KATE SPADE SATURDAY Launch

22. Although SSLLC has had ample opportunity to raise with Kate Spade any concerns – however misguided – it may have about the KATE SPADE SATURDAY brand, it delayed until the eve of the KATE SPADE SATURDAY launch to begin its attack.

23. Notwithstanding the crowded field of “Saturday” trademarks, and notwithstanding the fact that the products to be sold under the KATE SPADE SATURDAY mark have less in common with the surfboard products and related men’s apparel sold by SSLLC than a number of the other SATURDAY-related trademarks already in the marketplace, SSLLC now accuses Kate Spade of deliberately, willfully infringing the SATURDAYS SURF NYC mark to the detriment of SSLLC’s reputation.

24. SSLLC’s campaign began with a letter that its counsel sent to Kate Spade in November stating its willingness to bring litigation to enforce its rights in the common word “Saturday” if Kate Spade did not accede to its demands and abandon its millions of dollars and years of effort invested in KATE SPADE SATURDAY. Although that letter was dated November 14, 2012, oddly, it was not sent to Kate Spade directly but instead was sent to CT Corporation, which did not receive the letter until November 26, 2012. CT Corporation in turn sent the letter to Kate Spade. In that letter (a copy of which is attached as Exhibit A), SSLLC’s counsel asserted:

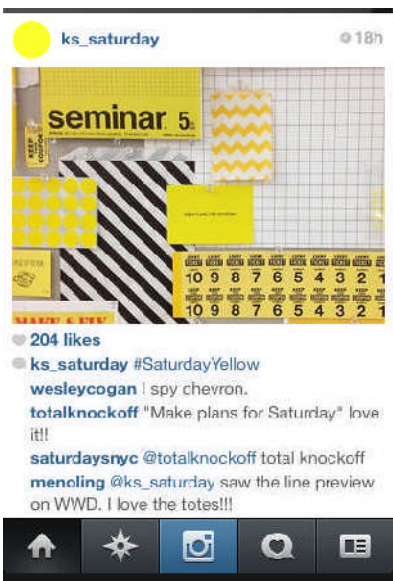
- “consumers who encounter the ‘Kate Spade Saturday Trademarks’ will mistake your company and its goods for those of our client” SSLLC;

- “given the amount and substantiality of the impending **actual** confusion that will take place in the industry, it is apparent that our client will have no problem proving its case against Kate Spade:’
- “our client will be immediately entitled to an injunction directing Kate Spade to cease its infringing conduct as well as an award of all monetary damages that result from the infringing use, any and all damages sustained by our client, and all costs incurred in the prosecution of the lawsuit”; and
- “because it is clear from the facts that Kate Spade was aware of our client’s superior rights, you should know that your company’s actions constitute not only trademark infringement, but **willful** trademark infringement.”

25. The threat of litigation by SLLC has left a cloud hanging over Kate Spade and the KATE SPADE SATURDAY brand just before its launch. Accordingly, immediately upon receipt of SLLC’s letter, Kate Spade’s in-house counsel called SLLC’s counsel to inform him of the late delivery of the letter and that a written, substantive response would be forthcoming. On December 10, 2012, Kate Spade’s outside counsel sent a detailed response to SLLC’s counsel in which Kate Spade discussed the good faith selection of the KATE SPADE SATURDAY name, described the KATE SPADE SATURDAY concept, explained why confusion was highly unlikely, and offered to answer any additional questions SLLC or its counsel may have. *See* Exhibit B. SLLC’s counsel responded by saying that he hoped to get back to Kate Spade “within the next week,” *see* Exhibit C, but it has now been more than a week and neither Kate Spade nor its counsel has received a substantive response.

26. In the meantime, and notwithstanding Kate Spade’s good faith efforts to resolve this dispute, SLLC has embarked on a campaign to publicly disparage Kate

Spade. On information and belief, SLLC arranged for the posting of blog reports criticizing Kate Spade and suggesting that consumer confusion would be likely. *See* Exhibit D. SLLC employees have posted comments (shown at left below) on the KATE SPADE SATURDAY Instagram page accusing Kate Spade of copying SATURDAYS SURF NYC, being guilty of a “total knockoff,” and being “lazycorporatetools.” On information and belief, SLLC has caused its supporters to post other comments on Kate Spade’s Instagram page, including the Instagram comment at right, below, in which “jennelombardo” says that KATE SPADE STAURDAY “ripped off @saturdaysnyc so bad. Lame. Losers. Fraud. Fakes. Suck it.” These comments, available for all of Kate Spade’s fans to see, are maliciously false and highly disparaging; accordingly, Kate Spade (as it is entitled to do) intends to delete these posts.



27. SSLLC has encouraged its fans to post comments on Kate Spade's social media pages through posts on SSLLC's own social media pages. For example, reproduced below and on the next page are posts that SSLLC has added to its Instagram and Facebook pages to encourage criticism of Kate Spade, including rendering its own logo in yellow (like the KATE SPADE SATURDAY logo), even though its registered trademark (see paragraph 5, above) is in gray against a white background. Some of the very parties who have "liked" or commented on these posts on SSLLC's pages are the same users who have posted disparaging comments on Kate Spade's own pages.



 **SATURDAYS SURF NYC** shared a link.
December 13 · 

SATURDAYS is not Kate Spade.



Kate Spade Swagger Jacks Saturdays NYC | Four Pins | Style, Gear, Life, Places, Features
four-pins.com

Their new brand, Saturday, launches this spring, so we offered up some additional

Like · Comment · Share  15

 131 people like this.

 **Jerry Mang** support you guys!
December 13 at 1:17pm · [Like](#)

 **Ryan Pope** yikes, sue those yahoos
December 13 at 1:22pm · [Like](#)

 **Wojtek Nosowski** dang!
December 13 at 1:22pm · [Like](#)

 **Terry Shilton** Legal action is the highest form of flattery
December 13 at 1:45pm via mobile · [Like](#)

 **Cristie Schrader** Even though the line is targeted towards women, I have to echo a comment on the article, that it's a lazy move and they deserve to be called out on it.
Saturday at 1:37am · Edited · [Like](#) ·  2

 **Ted Meow** Wow. Cut-throat.
December 13 at 1:53pm · [Like](#)

 **RRR Project** said the same thing to myself when I first saw this months ago, good luck boys
December 13 at 3:21pm · [Like](#)

 **Be Chanlimcharoen** Shameless Kate Spade.
December 13 at 4:31pm via mobile · [Like](#)

 **Danny DiMauro** LAZY CORPORATE TOOLS
Friday at 12:03am · [Like](#)

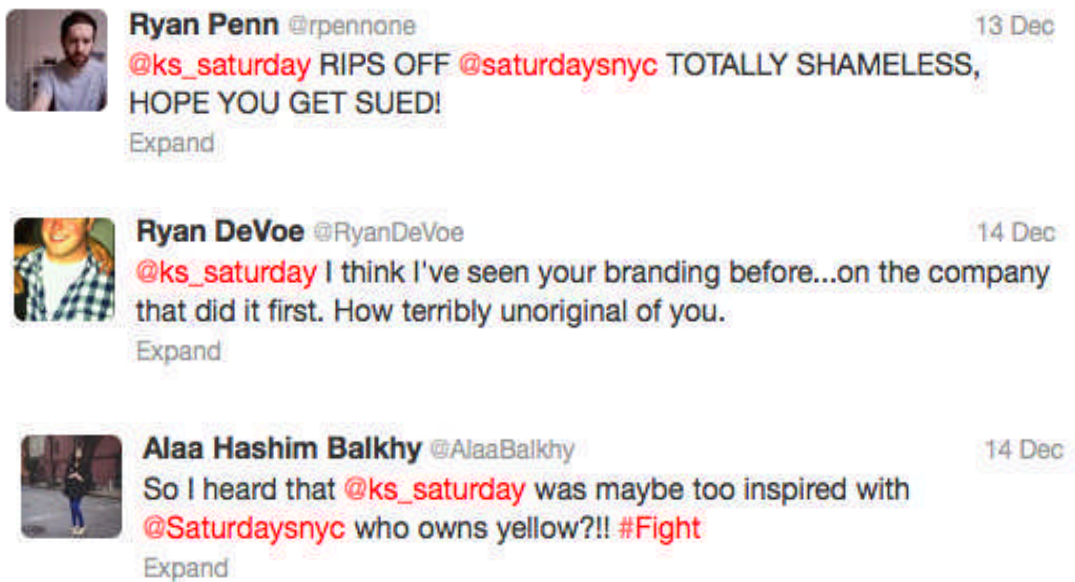
 **Urtzi Arriaga** Gora bihotzak!!
Friday at 12:53am · [Like](#)

 **Keith Rangnow** shots fired
Friday at 4:36am · [Like](#)

 **Brian Conway** kate spade's still in business?
Friday at 6:37am · [Like](#)

 Chat

28. On information and belief, this encouragement has had the desired effect, as other SSLLC fans have posted disparaging comments on the KATE SPADE SATURDAY Twitter feed, as shown below. As with the inappropriate posts on the KATE SPADE SATURDAYS Instagram page, Kate Spade will exercise its right to delete these posts.



29. SSLLC's coordinated campaign of litigation threats, planted blog posts, and social media defacing, if not enjoined, is likely to harm the KATE SPADE SATURDAY launch. Only a declaration from this Court that Kate Spade has the right to use the KATE SPADE SATURDAY trademark and that its mark does not infringe or otherwise violate any rights of SSLLC will dispel the cloud that hangs over Kate Spade as it plans the launch of its KATE SPADE SATURDAY brand.

COUNT ONE

(Declaration of Non-Infringement)

30. Kate Spade repeats and realleges the allegations above as if set forth herein.

31. SSLLC has asserted that Kate Spade's KATE SPADE SATURDAY mark constitutes trademark infringement, and has threatened to bring a lawsuit against Kate Spade on this basis. An actual, present and justiciable controversy has arisen between SSLLC and Kate Spade concerning the KATE SPADE SATURDAY mark.

32. Kate Spade seeks a declaratory judgment from this Court that the marketing and sale of its KATE SPADE SATURDAY products, and the provision of its services under the KATE SPADE SATURDAY mark, does not constitute infringement of SSLLC's SATURDAYS SURF NYC trademark or service mark, or of any other "Saturday"-related marks in which SSLLC claims rights, and does not otherwise violate any of SSLLC's trademark or service mark rights, under federal, state or common law, including but not limited to under the Lanham Act, 15 U.S.C. § 1125(a).

Prayer for Relief

WHEREFORE, by their undersigned attorneys, Kate Spade prays for relief as follows:

A. Declare that Kate Spade has the right to manufacture, distribute, market and sell in the United States a wide array of products under the trademark KATE SPADE SATURDAY, and to offer those products through retail and mail order services.

B. Declare that Kate Spade's KATE SPADE SATURDAY mark does not infringe or otherwise impair or violate under any federal, state or common law rights SSLLC may have in the trademark SATURDAYS SURF NYC and any other trademarks or service marks of SSLLC containing the word "Saturday."

C. Enjoin SSLLC and all those acting in concert and participation with it from posting on Kate Spade's social media pages and websites any disparaging comments about Kate Spade or the KATE SPADE SATURDAY brand, publicly accusing Kate Spade of trademark infringement, and/or otherwise promoting their own SATURDAYS SURF NYC brand through postings and comments on the Kate Spade social media pages and websites.

D. Such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 19, 2012

Respectfully submitted,

/s/ David H. Bernstein

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Attorneys for Plaintiff Kate Spade LLC

EXHIBIT A



David Christopher Baker
dbaker@hkclaw.com

November 14, 2012

Our File Number: 38359.001/4836-4465-8449v.1

**CONFIDENTIAL COMMUNICATION
FOR SETTLEMENT PURPOSES ONLY
Fed. R. Evid. 408; Cal. Evid. Code § 1152**

VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kate Spade, LLC
c/o CT Corporation System (as Registered Agent)
111 Eighth Avenue
New York, NY 10011

Re: Cease and Desist – Willful Trademark Infringement

Dear Gentleperson(s):

Our firm represents Saturdays Surf LLC (hereinafter "SSNYC") with regard to numerous intellectual property matters, including the protection of the SSNYC trademarks. Our client is the owner of the "SATURDAYS SURF NYC" trademark and uses the same in connection with the sales of apparel and apparel accessories as well as the provision of retail services, both on-line and through retail stores.

Our client has exercised great care to control the quality of the products sold under the "SATURDAYS SURF NYC" mark, and has established a reputation throughout the United States and in many parts of the world for high quality products and services. SSNYC has not only marketed and sold products under the "SATURDAYS SURF NYC" trademark for more than three (3) years, but SSNYC has also taken the precaution of applying for registration of its trademarks on an active use basis with the U.S. Patent and Trademark Office.

More specifically, SSNYC holds the following pending trademark registrations in the United States:


Mark	Serial No.	Reg. No.	Filing Basis	Type	International Class	Filing Date
SATURDAYS SURF NYC	85296923	Pending	1A	Word	9 (Sunglasses) 18 (Handbags) 25 (Apparel) 35 (Retail services)	04/15/11

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	85296941	Pending	1A	Design	9 (Sunglasses) 18 (Handbags) 25 (Apparel) 35 (Retail services)	04/15/11
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SSNYC has used its trademarks and is also in the process of registering its trademarks in numerous countries outside the U.S. and has already obtained several such registrations. Further, SSNYC has expanded the use of its trademarks and is in the process of obtaining additional registrations for its trademarks in relation to additional goods and services in an expanded range of International Classes. As a result, our client holds the right to exclusive use of "SATURDAYS SURF NYC" and all marks confusingly similar thereto within the United States and elsewhere. 15 U.S.C. §1057(b); 15 U.S.C. §1115(a). For reference, we have enclosed copies of the PTO summaries for each mark. (Collectively, these trademarks are referred herein to as the "SSNYC Trademarks.")

Kate Spade Saturday Trademarks. Recently, it has come to our attention that Kate Spade, LLC ("Kate Spade") has submitted applications for registration of certain trademarks with the USPTO on an intent to use basis (or 1B) that are confusingly similar to the SSNYC trademarks. Further, it has become apparent that Kate Spade intends to begin using these trademarks in commerce within the U.S. and to use them in a manner and a scope that is certain to create confusion in the minds of consumers. The primary reason that Kate Spade's use of the marks will cause confusion is because they will be used in connection with goods and services that are already associated with the SSNYC trademarks and because the graphic display of the Kate Spade marks will rely upon prominent use of the word "Saturday" in a font that is strikingly similar to that used by SSNYC.

More specifically, we are informed and believe that Kate Spade has submitted registration applications for the following trademarks incorporating the word "Saturday" and that these marks will be confused with the SSNYC marks:

Mark	Serial No.	Reg. No.	Filing Basis	Type	International Class	Filing Date
KATE SPADE SATURDAY	85542634	N/A	1B	Word	21 (Dishware)	02/14/12
KATE SPADE SATURDAY	85088791	N/A	1B	Word	25 (Apparel)	07/20/10
KATE SPADE SATURDAY	85399278	N/A	1B	Word	24 (Bedding)	08/16/11
KATE SPADE SATURDAY	85395579	N/A	1B	Word	09 (Electronics cases)	08/11/11
SATURDAILY	85708326	N/A	1B	Word	41 (News services)	08/20/12
KATE SPADE SATURDAY	85542623	N/A	1B	Word	03 (Cosmetics)	02/14/12



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KATE SPADE SATURDAY	85395746	N/A	1B	Word	35 (Mail order services)	08/11/11
KATE SPADE SATURDAY	85395668	N/A	1B	Word	16 (Paper products)	08/11/11
KATE SPADE SATURDAY	85088913	N/A	1B	Word	14 (Jewelry)	07/20/10
KATE SPADE SATURDAY	85088833	N/A	1B	Word	18 (Luggage)	07/20/10

For reference, we have enclosed copies of the PTO summaries for each mark. (Collectively, these trademarks are referred herein to as the "Kate Spade Saturday Trademarks.")

Trademark Infringement. As you may be aware, the use of an essentially identical trademark to sell products identical to those of our client constitutes, among other things, federal trademark infringement and unfair competition actionable in federal court. See 15 U.S.C. §§ 1114, 1125. We understand that Kate Spade has not yet begun using the "Kate Spade Saturday Trademarks" in connection with any goods or services. However, we are aware that Kate Spade has made numerous announcements in trade publications, on its Web site, in press releases, and through industry sources indicating that it intends to begin using the marks actively within the next several months. Clearly, once such active use begins, consumers who encounter the "Kate Spade Saturday Trademarks" will mistake your company and its goods and services for those of our client.

The test for trademark infringement in the U.S. is whether the simultaneous use of competing marks creates a *likelihood* of confusion. And, given the amount and substantiality of the impending *actual* confusion that will take place in the industry, it is apparent that our client will have no problem proving its case against Kate Spade. As such, our client will be immediately entitled to an injunction directing Kate Spade to cease its infringing conduct as well as an award of all monetary damages that result from your company's infringing use. This will include any and all profits your company has derived from the infringing use, any and all damages sustained by our client, and all costs incurred during the prosecution of the lawsuit. 15 U.S.C. § 1117.

Worse yet, because it is clear from the facts that Kate Spade was aware of our client's superior rights, you should know that your company's actions constitute not only trademark infringement, but *willful* trademark infringement. Any attempt to allege ignorance would be disingenuous because your infringing marks prominently incorporate the word "Saturday" in "Kate Spade Saturday" and, instead of emphasizing "Kate Spade" they emphasize "Saturday" in a font that is strikingly similar to the SSNYC font. Accordingly, it is undeniable that your company intentionally set out to violate our client's longstanding rights. As such, any court is likely to award up to three times the ordinary damages as well as reasonable attorney fees incurred by our client in this dispute. 15 U.S.C. § 1117.

We cannot allow your company to continue to use the "Kate Spade Saturday" trademarks to the detriment of our client's reputation. Before filing suit, however, we wanted to provide you with an opportunity to voluntarily **cease** your infringing conduct. It has been our experience that



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prudent business people, having been apprised of the potential penalties for infringing the rights of others, prefer to discontinue any further use of the infringing mark and to resolve the matter forthwith to avoid potential liability. Thus, we are contacting you in hopes that Kate Spade will respect our client's superior rights and agree to the following:

1. Immediately (and no later than 30 days from today's date) phase out use of the Kate Spade Saturday trademarks and change them to a different mark (or marks) that does not include the term "SATURDAY" or anything confusingly similar thereto;
2. Immediately notify the U.S. Patent and Trademark Office in writing with a copy to our office that you have withdrawn the applications for registration of the Kate Spade Saturday trademarks;
3. Immediately register a different domain name (or names) that does not include the term "SATURDAY" or anything confusingly similar thereto;
4. Immediately move your company Web site and change your company email address to the new domain name;
5. Upon completion of the above, transfer the domain name together with any other domain names that you own which include the term "SATURDAY" or anything confusingly similar thereto, to our client;
6. Immediately notify all of your actual and prospective clients of the changed trademarks, Web site and email address;
7. Deliver to our office for destruction any and all products and promotional materials, of any nature, which identify, feature, or display the Kate Spade Saturday trademarks; and
8. Submit your written assurance that you have discontinued, and will not resume in the future, the use of any trademark, service mark or domain name comprised of or incorporating the term "SATURDAY" or anything confusingly similar thereto;

We are informed and believe that you have not yet actively used the Kate Spade Saturday trademarks and, consequently, you have not derived any revenues or other benefit from use of the infringing trademarks. If, in fact, you have done so, then we must add the following demands:

9. Identify the time period during which your company has offered for sale or sold products under or in connection with the Kate Spade Saturday marks or Web site, or any other mark confusingly similar to our client's SSNYC Trademarks;
10. Provide an accounting of gross sales and revenues to date of products sold by your company under or in connection with the Kate Spade Saturday marks, or any other mark confusingly similar to our client's SSNYC Trademarks;



Kate Spade LLC
November 14, 2012
Page 5

11. Identify every individual and company to which you have sold product under or in connection with the Kate Spade Saturday marks, or any other mark confusingly similar to our client's SSNYC trademarks; and
12. Deliver copies of any and all U.S. tax returns filed by your company to date for the years during which you derived an economic benefit from use of the "Kate Spade Saturday" trademarks.

After we have received confirmation and compliance with the foregoing, we will draft a formal settlement agreement setting out the final terms for your review. In order to ensure our client is not prejudiced by untimely delays, however, we must demand that you or your legal counsel promptly respond to this correspondence and agree to the above demands by **no later than December 1, 2012**. You are cautioned not to ignore this letter, since, as you know, our client is entirely capable of enforcing its valuable intellectual property rights to the full extent of the law and has communicated to me its willingness to do so. In that regard, if we do not hear from you or your counsel promptly, we will assume you have chosen to ignore this letter and will thereafter act accordingly.

We look forward to receiving your response by the above-stated date. In the meantime, if you or your legal counsel should have any questions concerning this dispute, please do not hesitate to contact our office directly.

Very truly yours,

HART, KING & COLDREN



David Christopher Baker

Enclosures



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SATURDAYS SURF NYC

**Word Mark
Goods and
Services****SATURDAYS SURF NYC**

IC 009. US 021 023 026 036 038. G & S: Sunglasses. FIRST USE: 20110415. FIRST USE IN COMMERCE: 20110415

IC 018. US 001 002 003 022 041. G & S: Handbags, purses and wallets. FIRST USE: 20110415. FIRST USE IN COMMERCE: 20110415

IC 025. US 022 039. G & S: Clothing, namely, t-shirts, collared shirts, sweaters, sweatshirts, hooded sweatshirts, jackets, shorts, pants, slacks, trousers, swimwear, gloves, scarves, socks, and shoes. FIRST USE: 20100101. FIRST USE IN COMMERCE: 20100101

IC 035. US 100 101 102. G & S: Retail and on-line retail store services featuring clothing, clothing accessories, personal grooming products, coffee, and artwork. FIRST USE: 20090801. FIRST USE IN COMMERCE: 20090801

**Standard
Characters
Claimed****Mark Drawing
Code**

(4) STANDARD CHARACTER MARK

Serial Number

85296923

Filing Date

April 15, 2011

Current Basis

1A

Original Filing

1A

Basis**Published for
Opposition**

October 9, 2012

Owner(APPLICANT) Saturdays Surf LLC LIMITED LIABILITY COMPANY NEW YORK 31 Crosby Street
New York NEW YORK 100132637**Attorney of
Record**

David Christopher Baker

DisclaimerNO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SURF NYC" APART FROM THE
MARK AS SHOWN**Type of Mark**

TRADEMARK. SERVICE MARK

Register

PRINCIPAL

**Live/Dead
Indicator**

LIVE

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SATURDAYS
SURF NYC

**Word Mark
Goods and
Services**

SATURDAYS SURF NYC

IC 009. US 021 023 026 036 038. G & S: Sunglasses. FIRST USE: 20090801. FIRST USE IN COMMERCE: 20090801

IC 018. US 001 002 003 022 041. G & S: Handbags, purses and wallets. FIRST USE: 20100101. FIRST USE IN COMMERCE: 20100101

IC 025. US 022 039. G & S: Clothing, namely, t-shirts, collared shirts, sweaters, sweatshirts, hooded sweatshirts, jackets, shorts, pants, slacks, trousers, swimwear, gloves, scarves, socks, and shoes. FIRST USE: 20090801. FIRST USE IN COMMERCE: 20090801

IC 035. US 100 101 102. G & S: Retail and on-line retail store services featuring clothing, clothing accessories, personal grooming products, coffee, and artwork. FIRST USE: 20090801. FIRST USE IN COMMERCE: 20090801

**Mark Drawing
Code**

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search
Code**

26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)
26.17.08 - Bands, diagonal; Bars, diagonal; Diagonal line(s), band(s) or bar(s); Lines, diagonal

Serial Number

85296941

Filing Date

April 15, 2011

Current Basis

1A

**Original Filing
Basis**

1A

Published for Opposition October 2, 2012

Owner (APPLICANT) Saturdays Surf LLC LIMITED LIABILITY COMPANY NEW YORK 31 Crosby Street
New York NEW YORK 100132637

Attorney of Record David Christopher Baker

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SURF NYC" APART FROM THE MARK AS SHOWN

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the word "SATURDAYS" atop the word "SURF" and the letters "NYC" with a stylized linear element featured in the background.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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KATE SPADE SATURDAY

Word Mark	KATE SPADE SATURDAY
Goods and Services	IC 021. US 002 013 023 029 030 033 040 050. G & S: Dishes, drinking glasses, household utensils, namely, kitchen tongs; cookware, namely, pots and pans; coasters not of paper and not being table linen; pitchers; bowls, ice buckets, plastic storage containers for household use; vases; soap dispensers; soap dishes, napkin holders, salt and pepper shakers, sugar and creamer sets
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85542634
Filing Date	February 14, 2012
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	October 9, 2012
Owner	(APPLICANT) KATE SPADE LLC, LIMITED LIABILITY COMPANY DELAWARE 2 Park Avenue Legal Dept. New York NEW YORK 10016
Prior Registrations	2073406;2537318;3271494
Type of Mark	TRADEMARK
Register	PRINCIPAL

Other Data The name(s), portrait(s), and/or signature(s) shown in the mark identifies "KATE SPADE", whose consent(s) to register is made of record.

Live/Dead Indicator LIVE

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KATE SPADE SATURDAY

Word Mark	KATE SPADE SATURDAY
Goods and Services	IC 025, US 022 039, G & S: Belts; Blazers; Blouses; Bottoms; Bras; Coats; Dresses; Footwear; Gloves; Headwear; Hosiery; Jackets; Jeans; Knit tops; Lingerie; Loungewear; Neckwear; Pants; Scarves; Shirts; Shorts; Skirts; Sleepwear; Socks; Sweaters; Swimwear; Tank tops; Tops; Underwear
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85088791
Filing Date	July 20, 2010
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	November 29, 2011
Owner	(APPLICANT) Kate Spade LLC LIMITED LIABILITY COMPANY DELAWARE 2 Park Avenue New York NEW YORK 10016
Attorney of Record	Geri Lynn Mankoff-Elias
Prior Registrations	2578942;2613247;2905861;AND OTHERS

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead
Indicator LIVE

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KATE SPADE SATURDAY

Word Mark	KATE SPADE SATURDAY
Goods and Services	IC 024, US 042 050. G & S: Bed blankets; Bed sheets; Bed skirts; Bedspreads; Comforters; Covers for cushions; Crib bumper pads; Crib bumpers; Crib canopies; Curtains; Draperies; Dust ruffles; Duvet covers; Duvets; Handkerchiefs; Kitchen linens; Kitchen towels; Mattress covers; Mattress pads; Pillow covers; Pillow shams; Pillowcases; Pot holders; Quilts; Shower curtains; Table linen, namely, coasters, napkins, place mats and tablecloths.; Towels; Wash cloths
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85399278
Filing Date	August 16, 2011
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	January 10, 2012
Owner	(APPLICANT) Kate Spade LLC LIMITED LIABILITY COMPANY DELAWARE 2 Park Avenue Legal Dept. New York NEW YORK 10016
Attorney of Record	Geri Lynn Mankoff-Elias
Prior	2064708;2522892;2724972;AND OTHERS

Registrations**Type of Mark** TRADEMARK**Register** PRINCIPAL**Other Data** The name shown in the mark identifies KATE SPADE, whose consent to register is on record under prior registrations for Kate Spade.**Live/Dead Indicator** LIVE

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KATE SPADE SATURDAY

Word Mark	KATE SPADE SATURDAY
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Carrying cases for electronic equipment, namely, cell phones, laptops, portable readers, ear buds and portable media players; Computer mouse; Ear buds; Eyeglass chains and cords; Eyeglass frames; Eyeglasses; Eyewear; Eyewear cases; Mouse pads; Protective covers and cases for cell phones, laptops and portable media players; Protective covers for electronic reading devices; Sunglasses; USB (universal serial bus) hardware
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85395579
Filing Date	August 11, 2011
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	January 10, 2012
Owner	(APPLICANT) Kate Spade, LLC LIMITED LIABILITY COMPANY DELAWARE 2 Park Avenue Legal Dept. New York NEW YORK 10016
Attorney of Record	Geri Lynn Mankoff-Elias
Prior	2064708;2522892;2724972;AND OTHERS

Registrations**Type of Mark** TRADEMARK**Register** PRINCIPAL**Other Data** The name shown in the mark identifies "KATE SPADE", whose consent to register is on record under prior registrations for "Kate Spade".**Live/Dead Indicator** LIVE

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SATURDAILY

Word Mark	SATURDAILY
Goods and Services	IC 041, US 100 101 107. G & S: Providing information, news, commentary and photos in the fields of fashion, apparel and accessories via global computer networks; online journals, namely, blogs in the fields of fashion, apparel and accessories
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85708326
Filing Date	August 20, 2012
Current Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Kate Spade LLC LIMITED LIABILITY COMPANY DELAWARE 2 Park Avenue Legal Dept. New York NEW YORK 10016
Attorney of Record	Jay M. Burgett
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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KATE SPADE SATURDAY

Word Mark KATE SPADE SATURDAY
Goods and Services IC 003. US 001 004 006 050 051 052. G & S: Cosmetics, namely, nail polish and lipstick, perfumes, colognes, toilet soap, potpourri, personal cleaning and bath products, namely, soaps, face and body powders; personal care products, namely, skin moisturizer, bath oils, skin cleansers, skin scrubs, shower gels, bubble bath, after shave lotion, personal deodorant; hair care products, namely, shampoo, conditioner, styling compounds, namely, hair styling gel, lotion, and mousse; tanning and sun products, namely, sun tan gel, sun tan lotion, and sun tan oil

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85542623

Filing Date February 14, 2012

Current Basis 1B

Original Filing Basis 1B

Published for Opposition July 17, 2012

Owner (APPLICANT) KATE SPADE LLC. LIMITED LIABILITY COMPANY DELAWARE 2 Park Avenue
Legal Dept. New York NEW YORK 10016

Prior Registrations 2073406;2537318;3271494;AND OTHERS

Type of Mark TRADEMARK
Register PRINCIPAL
Other Data The name(s), portrait(s), and/or signature(s) shown in the mark identifies "KATE SPADE", whose consent(s) to register is made of record.
Live/Dead Indicator LIVE

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KATE SPADE SATURDAY

Word Mark	KATE SPADE SATURDAY
Goods and Services	IC 035. US 100 101 102. G & S: Mail order services featuring clothing, leather bags and purses, belts, scarves, tights, jackets, shawls, jewelry, footwear, cosmetics, fragrance products, skin care products, eyewear, luggage, bath linen, bed linen and table linen; Retail store and on-line retail store services featuring clothing, leather bags and purses, belts, scarves, tights, jackets, shawls, jewelry, footwear, cosmetics, fragrance products, skin care products, eyewear, luggage, bath linen, bed linen and table linen
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85395746
Filing Date	August 11, 2011
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	July 3, 2012
Owner	(APPLICANT) Kate Spade, LLC LIMITED LIABILITY COMPANY DELAWARE 2 Park Avenue Legal Dept. New York NEW YORK 10016
Attorney of Record	Geri Lynn Mankoff-Elias

Prior Registrations 2073406;2537318;2578942;AND OTHERS
Type of Mark SERVICE MARK
Register PRINCIPAL
Other Data The name(s), portrait(s), and/or signature(s) shown in the mark identifies "KATE SPADE", whose consent(s) to register is made of record.
Live/Dead Indicator LIVE

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KATE SPADE SATURDAY

Word Mark	KATE SPADE SATURDAY
Goods and Services	IC 016. US 002 005 022 023 029 037 038 050. G & S: Address books; Appointment books; Arts and craft clay kits; Bookmarks; Calendars; Desk baskets for desk accessories; Erasers; Holders for desk accessories; Memory books; Office stationery; Paper sheets for note taking; Paper stationery; Pencil sharpeners; Personal organizers; Sketchbooks; Stationery; Writing utensils
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85395668
Filing Date	August 11, 2011
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	July 3, 2012
Owner	(APPLICANT) Kate Spade, LLC LIMITED LIABILITY COMPANY DELAWARE 2 Park Avenue Legal Dept. New York NEW YORK 10016
Attorney of Record	Geri Lynn Mankoff-Elias
Prior Registrations	2064708;2522892;2724972;AND OTHERS

Type of Mark TRADEMARK
Register PRINCIPAL
Other Data The name shown in the mark identifies "KATE SPADE", whose consent to register is on record under prior registrations for "Kate Spade".
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KATE SPADE SATURDAY

Word Mark	KATE SPADE SATURDAY
Goods and Services	IC 014. US 002 027 028 050. G & S: Ankle bracelets; Bracelets; Charms; Earrings; Jewelry; Jewelry boxes; Jewelry cases; Necklaces; Pendants; Pins being jewelry; Rings; Watches
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85088913
Filing Date	July 20, 2010
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	October 26, 2010
Owner	(APPLICANT) Kate Spade LLC LIMITED LIABILITY COMPANY DELAWARE 2 Park Avenue Legal Dept. New York NEW YORK 10016
Attorney of Record	Geri Lynn Mankoff-Ellas
Prior Registrations	2578942;2613247;2905861;3092920;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL
Other Data	The name "KATE SPADE" identifies a living individual whose consent is of record.

Live/Dead Indicator LIVE

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KATE SPADE SATURDAY

Word Mark	KATE SPADE SATURDAY
Goods and Services	IC 018. US 001 002 003 022 041. G & S: Backpacks; Beach bags; Card wallets; Clutch bags; Clutch purses; Cosmetic bags sold empty; Cosmetic cases sold empty; Credit card cases; Handbags; Key bags; Key cases; Key wallets; Luggage; Purses; Sport bags; Tote bags; Travel bags; Travel cases; Umbrellas; Wallets
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85088833
Filing Date	July 20, 2010
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	May 3, 2011
Owner	(APPLICANT) Kate Spade LLC LIMITED LIABILITY COMPANY DELAWARE 2 Park Avenue Legal Dept. New York NEW YORK 10016
Attorney of Record	Geri Lynn Mankoff-Elias
Prior Registrations	2578942;2613247;2905861;AND OTHERS

Type of Mark TRADEMARK
Register PRINCIPAL
Other Data The name "KATE SPADE" identifies a living individual whose consent is of record.
Live/Dead Indicator LIVE

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**Service of Process
Transmittal**

11/26/2012

CT Log Number 521673112



TO: Marybell Flores
Fifth & Pacific Companies, Inc.
5901 WEST SIDE AVENUE
North Bergen, NJ 07047

RE: **Process Served In New York**

FOR: Kate Spade LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: RE: Cease and Desist - Wilful Trademark Infringement // To: Kate Spade, LLC
Name discrepancy noted.

DOCUMENT(S) SERVED: Letter, Attachment(s)

COURT/AGENCY: None Specified
Case # None Specified

NATURE OF ACTION: Letter of Intent - Threatening Litigation - Regarding the willful trademark infringement due to which the plaintiff suffered damages

ON WHOM PROCESS WAS SERVED: C T Corporation System, New York, NY

DATE AND HOUR OF SERVICE: By Certified Mail on 11/26/2012 postmarked on 11/14/2012

JURISDICTION SERVED : New York

APPEARANCE OR ANSWER DUE: No later than December 1, 2012

ATTORNEY(S) / SENDER(S): David Christopher Baker
Hart, King & Coldren
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707
714-432-8700

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex Standard Overnight , 794162594034
Image SOP
Email Notification, Marybell Flores mflores@fnpc.com

SIGNED: C T Corporation System
PER: Christopher Tilton
ADDRESS: 111 Eighth Avenue
13th Floor
New York, NY 10011
TELEPHONE: 212-590-9070



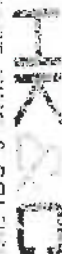
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200 Sandpointe, Fourth Floor
Santa Ana, California 92707

Kate Spade, LLC
c/o CT Corporation System
111 Eighth Avenue
New York, NY 10011